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STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL  
DIVISION OF SOIL AND WATER CONSERVATION

DELAWARE COASTAL  
MANAGEMENT PROGRAM

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David Kaiser  
Federal Consistency Coordinator  
NOAA, Office of Ocean and Coastal Resource Management  
1305 East-West Hwy, 11<sup>th</sup> Floor (N/ORM3)  
Silver Spring, MD 20910

Re: NOAA's Advance Notice of Proposed Rulemaking  
For Procedural Changes to the Consistency Process

Dear Mr. Kaiser:

I write to offer comments on the six questions posed by the Advance Notice of Proposed Rulemaking (ANPR) published in the July 2, 2002 Federal Register regarding the Coastal Zone Management Act (CZMA) Federal Consistency program.

Let me begin by stating that there are no demonstrable reasons to modify the program and process at this time. The recent changes to the federal consistency regulations took several years to finalized and there has not been enough time to see how these amendments are working. Thousands of federal consistency determinations are processed coast wide annually. Almost all of these applications get state approval. It appears that a few controversial proposals on the Outer Continental Shelf (OCS) may cause unnecessary and perhaps detrimental changes to a process that works.

The questions listed in the ANPR and my response are italicized below.

1. Whether NOAA needs to further describe the scope and nature of information necessary for a State Coastal Management Plan (CMP) and the Secretary to complete their CZMA reviews and the best way of informing Federal agencies and the industry of the information requirements?

*NOAA does not need to further describe the scope and nature of information necessary for a State CMP and the Secretary to complete their CZMA reviews. It is already documented in state and federal law and regulation. Nor does NOAA need to further describe the best way of informing Federal agencies and the industry of the information requirements. Again, it is already complete*

*to the maximum extent practicable. A statement of required information at the beginning of the review process may reinforce this and enable federal agencies and industry to better plan their NEPA type processes and would allow them to begin addressing state's concerns early in the process. The coastal environmental and economic information necessary for determination and appeal processing varies depending upon the situation. States work closely with Federal agencies and industry in all aspects of the consistency process. Complicated and/or controversial applications just take longer to process.*

2. Whether a definitive date by which the Secretary must issue a decision in a consistency appeal under CZMA sections 307(c)(3)(A), (B) and 307(d) can be established taking into consideration the standards of the Administrative Procedures Act and which, if any, Federal environmental reviews should be included in the administrative record to meet those standards?

*If it can be determined when the record is complete (i.e. all information needed to base a decision upon has been submitted) then it seems like a deadline for decision is reasonable. If the information isn't available because something new has come up, which happens often in large complex projects, then the deadline would be a problem. What if additional information is needed and the industry is willing to develop it but the clock ticks on and the application is deemed inconsistent due to time constraints? Aren't the review standards for consistency appeal different than those for consistency determination? If NOAA wants to establish some sort of standard for what is required for environmental review nationwide, the standards must be broad due to the diversity of coastal issues from state to state. Even with this approach state and federal resources must be available to process the completed application and budget reductions might not allow a comprehensive review. I question whether this would serve the public better.*

3. Whether there is a more effective way to coordinate the completion of Federal environmental review documents, the information needs of the States, MMS and the Secretary within the various statutory time frames of the CZMA and OCSLA?

*Extending the time under OCSLA to match CZMA timelines could do this. Further, early coordination of projects requiring NEPA review with State CZM programs would ensure that NEPA documentation contained all the information necessary for a Federal Consistency review would most likely speed the CZM process.*

4. Whether a regulatory provision for a "general negative determination," similar to the existing regulation for "general consistency determinations," 15 CFR 930.36(c), for repetitive Federal agency activities that a Federal agency determines will not have reasonably foreseeable coastal effects individually or cumulatively, would improve the efficiency of the Federal consistency process?

*In Delaware we work to make projects consistent whenever possible. This seems to be a way to skip the state process and go right to court. Is that the intent of this? Further, how is it possible for the Federal Government to make this determination? It should be left up to the States.*

5. Whether guidance or regulatory action is needed to assist Federal agencies and State CMPs in determining when activities undertaken far offshore from State waters have reasonably foreseeable coastal effects and whether the "listing" and "geographic location" descriptions in 15 CFR 930.53 should be modified to provide additional clarity and predictability to the applicability of State CZMA Federal Consistency reviews for activities located far offshore?

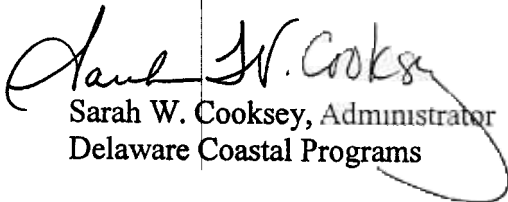
*I do not believe any additional guidance is needed. State CMPs already do this and have a process for changing the lists and geographic location.*

6. Whether multiple federal approvals needed for an OCS EP or DPP should be or can be consolidated into a single consistency review. For instance, in addition to the permits described in detail in EPs and DPPs, whether other associated approvals, air and water permits not "described in detail" in an EP or DPP, can or should be consolidated in a single State consistency review of the EP or DPP?

*The purpose of this question needs clarification. This already happens to some extent in some coastal states. State agencies work with federal agencies and industry to reduce duplication.*

Finally, the ANPR does not provide sufficient information regarding why any changes are being considered. It also is unclear as to the extent of any changes. Are they just for OCS activities or for all federal consistency determination? Unless there is information demonstrating that the existing process isn't working, the process does not need to be modified.

Sincerely,

  
Sarah W. Cooksey, Administrator  
Delaware Coastal Programs